

LOAN-RELATED REGULATIONS**OVERVIEW**

The examination procedures in this section are not addressed under the Approved Loans or Advertising and Public Notices sections of this manual. These procedures should be conducted to ensure compliance with all sections of the subject regulations.

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**TRUTH IN
LENDING
(TIL)**

Truth in Lending (TIL)
<p>1. Review forms that the institution uses when extending consumer credit for the following:</p> <ul style="list-style-type: none"> • Itemization of amount financed is separate from the other disclosures • "Finance charge" and "annual percentage rate" are more conspicuous than any other disclosure, except the creditor's identity <p>(226.17(a)(1) and 226.17(a)(2))</p>
<p>2. If credit balances are created in consumer accounts, determine that:</p> <ul style="list-style-type: none"> • The proper amounts are credited to the accounts • The amounts are refunded upon receipt of a written request • A good faith effort is made to refund the amounts after six months without any request <p>(226.21)</p>
<p>3. Determine that evidence of compliance with Regulation Z (with the exception of advertising requirements) is retained for two years after the disclosures were required to be made or other action was required to be taken. (226.25(a))</p>
<p>4. Verify that when accounts were opened or loans were consummated that loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:</p> <ul style="list-style-type: none"> • Index value • Margin and method of calculating rate changes • Rounding method • Adjustment caps (periodic and lifetime)
<p>5. Using a sample of periodic disclosures for open-end variable rate accounts (e.g., home equity accounts) and closed-end rate change notices for adjustable rate mortgage loans:</p> <ul style="list-style-type: none"> • Compare the rate-change date and rate on the credit obligation to the actual rate-change date and rate imposed • Determine that the index disclosed and imposed is based on the terms of the contract (example: the weekly average of one-year Treasury constant maturities; taken as of 45 days before the change date) (226.7(g) and 226.20(c) (2)) • Determine that the new interest rate is correctly disclosed by adding the correct index value with the margin stated in the note, plus or minus any contractual fractional adjustment (226.7(g) and 226.20(c)(1)) • Determine that the new payment disclosed (226.20(c)(4)) was based on an interest rate and loan balance in effect at least 25 days before the payment change date (consistent with the contract) (226.20(c))

**REAL ESTATE
SETTLEMENT
PROCEDURES
ACT (RESPA)**

Real Estate Settlement Procedures Act (RESPA)	
1.	If the financial institution conducts settlement, determine if the borrower, upon request, is allowed to inspect the HUD-1 or HUD-1A at least one business day prior to settlement. (3500.10(a))
2.	<p>Determine whether HUD-1 and HUD-1A forms are retained for five years after settlement.</p> <p><i>NOTE: If the financial institution subsequently disposes of its interest in the mortgage, and does not service the loan, the HUD-1 or HUD-1A must be transferred with the loan file.</i></p> <p>(3500.10(e))</p>
3.	<p>Through a review of late notices or otherwise, determine that no late fees have been imposed, and that no payments have been treated as late within 60 days following the effective date of a transfer of servicing.</p> <p>(3500.21(d)(5))</p>
4.	<p>Determine that the financial institution, as loan servicer for mortgage loans and refinancings subject to RESPA, responds to borrower inquiries as prescribed in the regulation, as follows:</p> <ul style="list-style-type: none"> • Provides the notice of receipt of inquiry for qualified written correspondence from borrowers within 20 business days (unless the action requested is taken within that period, and the borrower is notified in writing of that action) (3500.21(e)(1)) • Not later than 60 business days after receiving a qualified written request from the borrower, and if applicable, before taking any action with respect to the inquiry, the servicer should: <ul style="list-style-type: none"> i. Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and provide the borrower a written notification of the correction. The notification must include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or ii. After conducting an investigation, provide the borrower with a written explanation or clarification that includes: <ul style="list-style-type: none"> a. To the extent applicable, a statement of the servicer's reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or b. Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower. <p>(3500.21(e)(3))</p>

**REAL ESTATE
SETTLEMENT
PROCEDURES
ACT (RESPA)
(cont'd)**

<ul style="list-style-type: none"> • Determines that the financial institution does not provide information to any consumer reporting agency regarding overdue payment when investigating a qualified written request from a borrower regarding disputed payments during this 60 business day period (3500.21(e)(4)(i))
<p>5. Determine whether the financial institution or service provider charges a fee specifically for preparing and distributing the HUD-1 or HUD-1A forms, escrow statements, or documents required under the TILA. If such a fee is charged, it will be deemed a violation. (3500.12)</p>
<p>6. Determine if management is aware of the prohibitions against payment or receipt of kickbacks and unearned fees for settlements services. (3500.14)</p> <p><i>NOTE: For further guidance on receipt of fees, see "Mortgage Referral Programs and Section 8 of the Real Estate Settlement Procedures Act (RESPA)," Memorandum to Regional Directors, dated 12/19/95.</i></p>
<p>7. Through interviews with financial institution management and staff, loan file reviews, and reviews of good faith estimates and HUD-1 and HUD-1A forms, determine if "federally-related mortgage loan transactions" are referred by brokers, affiliates, or other parties. Identify those parties, if present. Also, identify persons or entities to which the financial institution refers services in connection with a "federally-related mortgage transaction". (3500.14)</p> <ul style="list-style-type: none"> • Identify the types of services rendered by the broker, affiliate, or service provider • Review of the financial institution's general ledger or otherwise, to determine if fees were paid to the financial institution or any parties identified • Confirm that any fees paid to the broker, affiliate (or affiliate's employees), service provider, or other party meet the requirements of Section 3500.14(g), and are for goods or facilities actually furnished or services actually performed
<p>8. When the financial institution owns the property being sold, determine whether it requires or gives the impression that title insurance is required from a particular company as a condition of the sale. (3500.16)</p>
<p>9. If the financial institution is the servicer for escrow accounts, determine if records for escrow accounts are maintained for at least five years after the servicer last serviced the escrow account. (3500.17(l)(2))</p>

**FAIR
HOUSING**

Fair Housing
<p>1. Determine, through interviews with financial institution staff and review of the loan files, whether the institution:</p> <ul style="list-style-type: none"> • Refers any applicants to a controlled entity, and • Purchases any home loans or home improvement loans (as defined by Regulation C) originated by the controlled entity as a condition to transacting any business with the controlled entity <p>If this arrangement exists, the financial institution is required to enter into a written agreement with that entity.</p> <p>The written agreement shall provide that the entity will:</p> <ul style="list-style-type: none"> • Comply with Sections 338.3, 338.4, and 338.7, and if otherwise subject to Regulation C – Home Mortgage Disclosure, Section 338.8 (338.9(a)) • Provide its books and records for examination by the FDIC (338.9(b)) • Comply with all instructions and orders issued by the FDIC with respect to its home loan practices (338.9(b))
<p>2. Follow Fair Lending procedures to review loan files for any indications of discrimination. Refer to PART III: H1, H2, and H3 of this manual.</p>

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
APPLICABILITY**

Depository Institutions
<p>1. Determine whether the depository institution meets the criteria below. If all criteria ("1.a." - "1.d.") are met, then the depository institution is subject to the requirements of HMDA and Regulation C.</p> <ul style="list-style-type: none"> • The depository institution originated in the preceding calendar year at least one home purchase loan or refinancing of a home purchase loan (other than temporary financing such as a construction loan) secured by a first lien on a one-to-four family dwelling [§203.2(e)(1)]; and • The depository institution: <ul style="list-style-type: none"> -- Is a federally insured or regulated institution [§203.2(e)(1)(i)]; or -- Originated a mortgage loan (reference procedure 1.a.) that was insured, guaranteed, or supplemented by a federal agency [§203.2(e)(1)(ii)]; or -- Originated a mortgage loan (reference procedure 1.a.) intending to sell it to FNMA or FHLMC [§203.2(e)(1)(iii)]; and • The depository institution had either a home or a branch office in an MSA on December 31 of the preceding calendar year [§203.3(a)(1)(i)]; and

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
APPLICABILITY
(cont'd)**

- The depository institution had more than \$29 million in total assets on the preceding December 31 [§203.3(a)(1)(ii)];

NOTE: While the benchmark for HMDA data collection in 1998 is \$29 million, the benchmark will be adjusted annually to reflect future changes in the Consumers Price Index for Urban Wage Earners and Clerical Workers (CPIW). The Federal Reserve Board will publish the benchmark in the Federal Register on an annual basis.

NOTE: The asset threshold in 1996 was \$10 million and in 1997 was \$28 million. HMDA applicability for financial institutions should be based on these amounts for the respective years being reviewed.

Non-Depository Institutions

2. Determine whether the financial institution has a majority-owned mortgage subsidiary that meets the criteria below. If all criteria ("2.a." - "2.c.") are met, then the subsidiary is subject to the requirements of HMDA and Regulation C.

- The majority-owned mortgage subsidiary is a for-profit institution and, in the preceding calendar year, had home purchase loan originations, including refinancings of home purchase loans, equal to or exceeding 10 percent of its total loan originations measured in dollars [§203.2(e)(2)]; and
- The majority-owned mortgage subsidiary either:
 - Had a home or branch office in an MSA as of December 31 of the previous year [§203.3(a)(2)(i)], or
 - Received applications for, originated, or purchased five or more home purchase or home improvement loans on property located in an MSA in the preceding calendar year [§203.2(c)(2)]; and
- The majority-owned mortgage subsidiary either:
 - Had total assets (when combined with the assets of the parent corporation) exceeding \$10 million on the previous December 31; or
 - Originated 100 or more home purchase loans, including refinancings of home purchase loans, in the preceding calendar year [§203.3(a)(2)(ii)].

NOTE: If HMDA and Regulation C are applicable, then the following examination procedures should be performed separately for the depository institution and any of its majority-owned mortgage subsidiaries. A separate checklist should be completed for each institution subject to HMDA and Regulation C.

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
APPLICABILITY
(cont'd)**

NOTE: When determining whether a financial institution is subject to HMDA, the examiner should remain cognizant of any counties which may have been added or deleted from an MSA, thus causing a financial institution either to become a new HMDA reporter or no longer be an HMDA reporter.

Refer to the FFIEC's booklet, "A Guide to HMDA Reporting, Getting It Right!" This can be a source of reference, as it lists counties in an MSA by state.

3. Determine whether there were any mergers or acquisitions since January 1 of the preceding calendar year.

Determine whether all required HMDA data for the acquired financial institutions were reported separately or in consolidation. Examination procedures that follow concerning accuracy and disclosure also apply to an acquired financial institution's data, even if separately reported.

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
COMPILATION
OF LOAN
DATA**

Compilation of Loan Data

4. Determine, through a review of written policies, internal controls, the HMDA Loan Application Register (HMDA-LAR), and discussions with management, whether the financial institution has compiled home mortgage disclosure information in accordance with §203.4 (a through d).
 - Determine how the financial institution ensures that the home mortgage disclosure information is properly compiled and disclosed. Consider:
 - Whether the financial institution has assigned one of its officers responsibility for oversight
 - Whether the Board of Directors has established an independent review of the policies, procedures, and HMDA data to ensure compliance and accuracy, and is advised each year of the accuracy and timeliness of the financial institution's data submissions
 - Whether the financial institution performs a self-analysis of the accuracy of the HMDA data and its timeliness, and whether the Board of Directors is informed of the results of the analysis. Obtain a detailed description of the analysis performed
 - Whether the financial institution performs HMDA-LAR volume analysis from year-to-year to detect increases or decreases in activity for possible omissions of data
 - Whether the financial institution maintains documentation for those loans it packages and sells to other institutions
 - Whether the HMDA-LAR is updated within 30 days after the end of each calendar quarter beginning January 1, 1996

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
COMPILATION
OF LOAN
DATA (cont'd)**

NOTE: In reviewing adverse action notices ensure that applicable real estate denials, withdrawals, etc. were recorded on the LAR within 30 days after the end of the calendar quarter in which final action is taken.

- Determine how management ensures that affected financial institution personnel are aware of the requirements of the Act. Consider:
 - Whether the individuals who have been assigned responsibility for data-entry receive appropriate training in the completion of the HMDA-LAR and receive copies of all HMDA instructional materials from the FFIEC and the appropriate supervisory agency in a timely manner
 - Whether these individuals have been provided copies of Regulation C, Instructions for Completion of the HMDA-LAR (Appendix A), the Staff Commentary to Regulation C, and the FFIEC's "Guide to HMDA Reporting, Getting It Right," in a timely manner
 - Whether these individuals know whom to contact, at the financial institution or their supervisory agency, if they have questions not answered by the written materials
 - Whether the financial institution's loan officers (including loan officers in the commercial loan department who may handle loan applications for multi-family or mixed-use properties) are informed of the reporting requirements necessary to assemble the information
 - Whether the financial institution's loan officers are familiar with the disclosure statements that will be produced from the data and cognizant of the ramifications for the financial institution if the data is wrong
 - Whether appropriate documentation of the information that has been entered on the HMDA-LAR is maintained
 - Whether data is collected at various branches, and if so, whether the appropriate personnel are sufficiently trained to ensure that all branches are reporting data under the same guidelines
 - Whether a numbering system is in place to assign unique identification numbers in codes to loan files
 - Whether the depository institution has some mechanism of internal controls to ensure that the data is captured accurately and consistently
 - The type of controls that have been established to ensure that separation of duties exists (e.g. data entry, review, oversight, approval)

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
COMPILATION
OF LOAN
DATA (cont'd)**

- Determine what procedures the institution has put in place to comply with the requirement to submit data in machine-readable form and whether the institution has some mechanism in place to ensure the accuracy of the data that is submitted in machine-readable form.
- Determine if policies, procedures and training are adequate, on an ongoing basis, to ensure compliance with the Home Mortgage Disclosure Act.

5. Verify that the financial institution accurately compiled home mortgage disclosure information in the prescribed categories by testing a sample of loans, applications, and applications not originated.

NOTE: To comply with Year 2000 data system standards, beginning in 1998, the year of the date of application and date of action taken should be entered using four digits (for example, 01/15/1998).

The review of the HMDA-LAR for submitted data should include a sample of the applications detailed on the HMDA-LAR to verify the accuracy of each entry. A sample of the current year's data should also be reviewed. The samples may comprise:

- Approved and denied transactions subject to HMDA that are sampled for Regulations B and Z
- Housing-related purchased loans
- Withdrawn housing-related loan applications

NOTE: Current calendar year LAR recording errors may also be violations of Section 338.8 of Fair Housing. When conducting the review of the LAR for accuracy, the examiner should review each line and column. Errors in the following data columns would significantly affect the decision of whether to require resubmission: race, sex, income, type of action taken, and census tract. Therefore, these areas should be closely reviewed.

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA) –
DISCLOSURE
AND
REPORTING**

Disclosure and Reporting

6. Determine whether the financial institution has satisfied the following reporting and disclosure requirements:
- The financial institution submitted its HMDA-LAR to the appropriate supervisory agency no later than March 1 following the calendar year for which the data are compiled and maintains the HMDA-LAR for at least three years thereafter. [§203.5(a)]

**MORTGAGE
DISCLOSURE
ACT (HMDA) –
DISCLOSURE
AND
REPORTING
(cont'd)**

NOTE: Institutions must submit data to their supervisory agencies in an automated, machine-readable form. The format must conform exactly to that of form FR HMDA-LAR, including the order of the columns, column headings, etc. Financial institutions that report twenty-five or fewer entries on their HMDA-LAR may collect and report HMDA data in a paper form. Any financial institution opting to submit its data in such a manner must send two copies that are typed or computer printed. They must use the format of the HMDA-LAR, but need not use the form itself. Each page must be numbered, and the total number of pages must be given (for example, "Page 1 of 3"). (Regulation C, Appendix A, Section II, Paragraph A)

- The financial institution makes its FFIEC HMDA disclosure statement available to the public at its home office no later than three business days after receiving its statement from the FFIEC. [§203.5(b)]
- The statement should be made available to the public in at least one branch office (in each additional MSA where the financial institution has offices) within ten business days after receiving the disclosure statement from the FFIEC. Alternatively, the financial institution may post the address for sending written requests for the disclosure statement in the lobby of each branch office in an MSA where the institution has offices, and mail or deliver a copy of the disclosure statement, within 15 calendar days of receiving a written request. [§203.5(b)]
- The financial institution's modified HMDA-LAR (application or loan number, date application received, and date action taken excluded from the data) has been made available to the public by March 31 for requests received on or before March 1, and within 30 days for a request received after March 1 following the calendar year for which the data is compiled. Refer to Regulation C, Appendix A. [§203.5(c)]
- The financial institution has policies and procedures to ensure its modified HMDA-LAR and its disclosure statement are available to the public for three and five years, respectively. [§203.5(d)]

NOTE: The disclosure statement at a branch office need only contain data relating to properties in the MSA where the branch office is located.

- The public is allowed to inspect and copy the above data during the hours the office is normally open to the public for business. If a fee is charged to obtain a copy, ensure it is reasonable based on cost incurred to provide or reproduce the data. [§203.5(d)]

7. Determine whether an officer of the financial institution signed the HMDA-LAR transmittal sheet certifying the accuracy of the data contained in the register. (Regulation C, Appendix A, Section III, Paragraph B).

NOTE: If the HMDA-LAR was submitted via the Internet, this signature should be retained on file, at the institution.

**MORTGAGE
DISCLOSURE
ACT (HMDA) –
DISCLOSURE
AND
REPORTING
(cont'd)**

8. Review the financial institution's last FFIEC disclosure statement, HMDA-LAR, modified HMDA-LAR, and any applicable correspondence from the regulatory agency, such as notices of noncompliance. Determine what errors occurred during the previous reporting period. If errors did occur, determine what steps the financial institution took to correct and/or prevent such errors in the future.

NOTE: Significant errors should be corrected and resubmitted to:

Federal Reserve Board

Attention: FDIC HMDA Processing

Fifth floor

1709 New York Avenue NW

Washington, D.C., 20006

(202)452-2016 (HMDA Assistance Line)

Adequate notation of errors and omissions should be made on all records currently available to the public. Financial institution controls should be revised and corrected to prevent recurrence. The institution should review 1-3 years of HMDA-LAR data to correct significant inaccuracies.

9. Determine if the financial institution has the necessary tools to compile the geographic information. [§ 203.4(a)(6) and Appendix A]
- Determine if the financial institution uses the U.S. Census Bureau's Census Tract/Street Index for 1990, the Census Bureau's 1990 Census Tract Outline Maps, equivalent materials available from the Census Bureau or from a private publisher, or an automated geocoding system in order to obtain the proper census tract numbers.
 - If the financial institution relies on outside assistance to obtain the census tract numbers (for example, private "geocoding" services or real estate appraisals), verify that adequate procedures are in place to ensure that the census tract numbers are obtained in instances where they are not provided by the outside source. For example, if the financial institution usually uses property appraisals to determine census tract numbers, how does it obtain this information if an appraisal is not received, such as in cases where a loan application is denied before an appraisal is made?
 - Verify that the financial institution has taken steps to ensure that the provider of outside services is using the appropriate 1990 Census Bureau data.
 - Verify that the financial institution uses current MSA definitions to determine the appropriate MSA numbers and boundaries. MSA definitions and numbers (and state and county codes) are available from the supervisory agency, the "FIPS PUB 8-5, Metropolitan Statistical Areas" (as updated periodically), or "A Guide to HMDA Reporting, Getting it Right."
 - For banks and savings associations not meeting the small bank definition under the CRA, verify that accurate data are also collected on the location of **every** property listed on the LAR.

**MORTGAGE
DISCLOSURE
ACT (HMDA) –
DISCLOSURE
AND
REPORTING
(cont'd)**

NOTE: The data collection requirements go into effect for calendar year 1996, with institutions required to report the data in 1997. Under the CRA, banks and savings associations that have total assets of \$250 million or more, or are subsidiaries of a holding company with total banking and thrift assets of \$1 billion (as of December 31 for each of the immediately preceding two years) or more must collect and report this data.

NOTE: Civil money penalties (CMPs) may be assessed for substantial HMDA violations for either Total Data Errors or Key Column Errors. For reference on how to calculate these errors and determine whether a recommendation for CMPs should be made, refer to the Formal and Informal Action Procedures (FIAP) manual.

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)**

Equal Credit Opportunity (ECOA)

1. Review all loan application forms, credit scoring sheets, financial statement forms, and any other forms used to obtain borrower information. Ensure that prohibited items of information are not requested and that any request for "other income" is properly qualified. (202.5)
2. Determine that the following time frames are adhered to. Applicants must be notified in writing of action taken:
 - 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application
 - 30 days after taking adverse action on an incomplete application, unless notice of incompleteness is provided
 - 30 days after taking adverse action on an existing account
 - 90 days after notification of a counteroffer if the applicant does not expressly accept or use the credit offered
 (202.9(a)(1))
3. Determine that written notifications of action taken on applications contain:
 - A statement of the action taken
 - The name and address of the creditor
 - A statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (the "ECOA NOTICE") (202.9(b)(1))
 - The name and address of the appropriate Regional Office of the FDIC
 - Either of the following:
 - (a) A statement of specific reasons for the action taken; or

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)
(cont'd)**

(b) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If reasons are provided orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(202.9(a)(2))

4. Determine that within 30 days after receiving an incomplete application regarding matters that an applicant can complete, the creditor shall notify the applicant of either:

- Action taken, in accordance with Section 202.9(a); or
- Incompleteness in accordance with the following:

If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with Section 202.9(a)(1) and 202.9(a)(2).

- At its option, a creditor may inform the applicant orally of the need for additional information: but if the application remains incomplete the creditor shall send a notice in accordance with Section 202.9(c)(1).

5. Determine that for a business that had gross revenues of \$1,000,000 or less in its preceding fiscal year, the procedures addressed above are followed, except that:

- The statement of the action taken may be given orally or in writing when adverse action is taken
- The disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information referencing the consumer's right to a statement of specific reasons and the ECOA notice

(202.9(a)(3))

6. Determine, that for a business that had gross revenues in excess of \$1,000,000 in its preceding fiscal year, the applicant is notified (orally or in writing) within a reasonable time of the action taken, and is provided a written statement of the reasons for adverse action and the ECOA notice, if the applicant makes a written request for the reasons within 60 days of being notified of adverse action. (202.9(a)(3))

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)
(cont'd)**

7. If the financial institution furnishes credit information to other parties, determine that such information is properly reported for joint accounts held by married persons. If the financial institution furnishes credit information to a consumer reporting agency, determine that the information on joint credit is furnished in a manner that will enable the agency to provide access to the information in the name of each spouse. (202.10)
8. Determine whether required records, as described in Section 202.12(b) of the regulation, are maintained for 25 months (12 months for business credit).
9. Follow Fair Lending procedures to review loan files for any indication of unlawful discrimination. Refer to PART III: H1, H2, and H3 of this manual.
10. Determine that the financial institution tracks data concerning the race, color, religion, or national origin of a borrower after credit has been extended, only in the narrow set of circumstances where such collection is expressly authorized for purposes of monitoring compliance with ECOA, HMDA, Fair Housing, and for special purpose credit programs. (202.5(d)(5)) <i>NOTE: Data concerning race, color, religion, or national origin of a borrower may not be collected for monitoring compliance with the CRA or other regulations except as expressly provided above.</i>

**CREDIT
PRACTICES
RULE**

Credit Practices Rule
1. Determine through discussion with financial institution management and staff if the financial institution attempts to enforce confessions of judgment, assignments of wages, security interests in household goods, or waivers of exemption in originated or acquired consumer contracts. (227.13)
2. Review the financial institution's collection policies, procedures, and practices to ensure that staff members are not using an assignment of wages except where permissible. (227.13(c))
3. Review past due loans to determine if the financial institution collects or attempts to collect overdue payments through assignments of wages. (227.13(c))
4. Review past due loans to determine if the financial institution collects, or attempts to collect, a late charge on a timely payment because of the consumer's failure to pay a late charge attributable to a prior delinquent payment. This prohibited practice is known as pyramiding of late charges. (227.15)

**CREDIT
PRACTICES
RULE (cont'd)**

5. Determine, through a review of procedures, policies, and practices, whether the financial institution takes steps to prevent its staff from engaging in prohibited co-signer practices on loans. (227.14(a))
6. Determine through discussions with financial institution management and staff, if there is evidence that the financial institution engages in prohibited co-signer practices.
Examples include misrepresentation of a co-signer's liability and contractually obligating co-signers prior to informing them of their liability. (227.14(a))
7. Determine through discussions with financial institution management and staff and a review of loan files, whether the co-signer is informed prior to becoming obligated, of the nature and extent of the co-signer's liability in accordance with Section 227.14(a).

**FAIR CREDIT
REPORTING
ACT (FCRA)**

Fair Credit Reporting Act	
<p><i>NOTE: FCRA procedures should only be performed in response to a complaint or if the FDIC otherwise has knowledge of a violation. These procedures may be performed if violations were noted at the previous examination and the current examination is the first or second examination after the examination at which the violations were noted.</i></p>	
1.	Review any written contracts between the financial institution and credit reporting agencies. Ensure the financial institution has certified that the purposes for which information from a credit report is sought are for purposes allowed under Section 604, and certified that the information will be used for no other purpose. (607)
2.	Determine if the financial institution is a consumer reporting agency.
3.	<p>If so, conduct the following procedures:</p> <p>Determine whether the following required disclosures are clearly and accurately provided upon request, and proper identification, by the consumer:</p> <ul style="list-style-type: none"> • The nature and substance of all information (except medical information) in its files on the consumer at the time of the request • The sources of the information except the sources acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed, provided that in the event an action is brought under the FCRA, such sources will be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought

**FAIR CREDIT
REPORTING
ACT (FCRA)
(cont'd)**

- The recipients of any consumer report on the consumer which it has furnished for:
 - Employment purposes within the two-year period preceding the request, and
 - Any other purpose within the six-month period preceding the request
- The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure
(609)

4. Determine that consumer reports were furnished under the following circumstances and no other:
- In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal Grand Jury
 - In accordance with the written instructions of the consumer to whom it relates
 - To a person that the consumer reporting agency has reason to believe intends to do the following:
 - Use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer
 - Use the information for employment purposes
 - Use the information in connection with the underwriting of insurance involving the consumer
 - Use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status
 - Use the information in connection with a business transaction involving the consumer
- (604)

5. Determine that obsolete information is not reported, as described under Section 605.

6. Determine if information has been reported to a governmental agency for reasons other than allowed in Section 604, that the information was limited to the consumer's name, address, former addresses, places of employment, or former places of employment, to a governmental agency. (608)

**FAIR CREDIT
REPORTING
ACT (FCRA)
(cont'd)**

7.	Determine that reasonable procedures are designed to avoid violations of Sections 604 and 605, and to assure maximum possible accuracy of the information concerning the individual about whom the report relates. (607)
8.	Review any accuracy disputes to ensure they are handled in accordance with procedures outlined in Section 611.
9.	Ensure personnel are adequately trained in the furnishing of information. (610(c))
10.	Determine that any charges made to a consumer for obtaining information in accordance with Section 609 are in compliance with instructions set forth in Section 612.
11.	Determine that procedures are designed to adequately provide public record information for employment purposes in accordance with Section 613.
12.	Determine that when an investigative consumer report is prepared, no adverse information in the consumer report (other than that which is public record) is included in a subsequent consumer report. An exception to this rule is when such adverse information has been verified in the process of making the consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished. (614)
13.	Determine if any investigative consumer reports have been prepared and whether the reports are in compliance with procedures set forth in Section 606.

**FLOOD
INSURANCE**

Third Party Vendors	
1.	If the financial institution uses a third party vendor for flood hazard determinations, then the vendor's financial condition should be reviewed on an annual basis. A financial institution's recourse against a vendor for any damages or liability that may arise from an incorrect flood hazard determination is in question if the vendor's financial condition is in jeopardy. Determine that the financial institution has procedures in place to ensure the financial status of third party vendors is monitored at least annually.

**WORKPAPER
STANDARDS**

Appropriate workpapers must be completed when reviewing compliance with loan-related regulations. Refer to Standardized Workpapers, Appendix K, in this manual.



**FDIC LAW,
REGULATIONS
& RELATED
ACTS**

Applicable Rules

Equal Credit Opportunity Act, Volume 2, Page 6610.16

Fair Credit Reporting Act, Volume 2, Page 6601

Fair Housing Act, Volume 3, Page 8201

Fair Housing Regulations, Volume 3, Page 9633

Federal Reserve Board's Regulation B Official Staff Interpretations, Volume 2, Page 7241

Federal Trade Commission Regulations: Statement of General Policy or Interpretation of the Fair Credit Reporting Act, Volume 2, Page 7179

Home Mortgage Disclosure Act of 1975, Volume 3, Page 8687

Part 338 – Fair Housing, Volume 1, Page 2647

Part 339 – Loans in Areas Having Special Flood Hazards, Volume 1, Page 2663

Part 3500 – HUD's Regulation X Real Estate Settlement Procedures Act, Volume 3, Page 8891

Real Estate Settlement Procedures Act of 1974, Volume 3, Page 8855

Real Estate Settlement Procedures Interpretive Ruling, Volume 3, Page 8963

Regulation AA – Unfair or Deceptive Acts or Practices, Volume 3, Page 7869

Regulation B – Equal Credit Opportunity, Volume 2, Page 7209

Regulation C – Home Mortgage Disclosure, Volume 3, Page 7553

Regulation Z – Truth In Lending, Volume 2, Page 6641

Staff Guidelines on the Credit Practices Rule, Volume 3, Page 7875

Truth In Lending Act, Volume 2, Page 6565

Truth In Lending Official Staff Commentary, Volume 2, Page 6871



**FDIC LAW,
REGULATIONS
& RELATED
ACTS (cont'd)**

**Advisory
Opinions**

Disclosure Requirements Upon Renegotiation of Fixed-Rate Mortgages, Letter #87-31, Volume 1, Page 4272, dated 11/5/87

Questions Concerning FDIC Enforcement of the Equal Credit Opportunity Act, Letter #87-39, Volume 1, Page 4279, dated 11/24/87

**Statements of
Policy**

Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement, Volume 2, Page 5221

FFIEC Policy Statement – Prescreening by Financial Institutions and the Fair Credit Reporting Act, Volume 2, Page 5337

FFIEC Statement on the Home Mortgage Disclosure Act, Volume 2, Page 5303

**DCA
MEMORANDA**

Examinations for Fair Credit Reporting Act Compliance, Transmittal # 97-034, dated 9/23/97, Classification # 6434

Further Guidance on Fair Credit Reporting Act (FCRA), Transmittal # 98-004, dated 3/5/98, Classification # 6434.1

Mortgage Referral Programs and Section 8 of the Real Estate Settlement Procedures Act (RESPA), Memorandum to Regional Directors, dated 12/19/95

Real Estate Settlement Procedures Act Examination Procedures, Transmittal # 97-024, dated 8/6/97, Classification # 6436

Revised Home Mortgage Disclosure Act (HMDA) Examination Procedures, Transmittal # 96-52, dated 10/31/96, Classification # 6400.1

Revisions to Examination Procedures for Regulation Z (Truth in Lending Act), Transmittal # 97-021, dated 7/21/97, Classification # 6430.2

Risk Management Priorities, Transmittal # 98-002, dated 1/26/98, Classification # 6410.14

Section 202.5(d)(5) – Data Collection Subsequent to Extension of Credit, Transmittal # 97-031, dated 09/22/97, Classification # 6452.2

Subsequent Disclosure Requirements and Regulation C Reporting Requirements for the Refinancing of Loans to Consumers, Memorandum to Regional Directors, dated 3/7/96

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

Equal Credit Opportunity: Appraisals and Enforcement, Letter #12-94, dated 2/28/94

Fair Credit Reporting Act: Policy Statement on Prescreening by Financial Institutions, Letter #62-91, dated 12/13/91

Fair Credit Reporting Act: The Consumer Credit Reporting Reform Act of 1996, Letter # 57-97, dated 6/2/97

Fair Housing Regulation: FDIC Finalizes Fair Housing Regulation (Part 338 of the FDIC's Rules and Regulations), Letter # 67-97, dated 7/14/97

Fair Lending Guide – Revised Edition of Side-By-Side, A Guide to Fair Lending, Letter #36-96, dated 6/6/96

HMDA – Amendments to Regulation C, Letter 22-93, dated 3/26/93

HMDA Data Required for Calendar Year 1996, Letter #2-96, dated 1/10/96

HMDA Data Required for Calendar Year 1997, Letter #96-96, dated 12/2/96

HMDA: Requirements Regarding Nondepository Mortgage Lenders and Applications Received Through Loan Brokers or Correspondents; Designations of Metropolitan Statistical Areas for 1994, Letter #69-93, dated 9/30/93

Home Mortgage Disclosure Act: 1998 Edition of A Guide to HMDA Reporting – Getting it Right!, Letter # 53-98, dated 5/15/98

Home Mortgage Disclosure Act: A Guide to HMDA Reporting – Getting it Right!, Letter #22-96, dated 4/15/96

Home Mortgage Disclosure Act: Asset Threshold for Reporting Calendar Year 1998 HMDA Data, Letter # 7-98, dated 1/14/98

Home Mortgage Disclosure Act – Federal Reserve Board Amendments to Required Annual Reports of Lending Activity, Letter #84-94, dated 12/28/94

Home Mortgage Disclosure Act: HMDA Data Reporting for Calendar Year 1997, Letter #121-97, dated 12/3/97

Home Mortgage Disclosure Act – New Staff Commentary on HMDA Reporting Requirements, Letter #6-96, dated 2/13/96

Mortgage Loan Prequalifications: Help Guide for Financial Institutions, Letter #35-96 (Revised), dated 7/3/96

New FDIC Guide to Compliance with the Fair Housing Act, Equal Credit Opportunity Act, Letter #47-94, dated 7/7/94

New Staff Commentary on HMDA Reporting Requirements, Letter #6-96, dated 2/13/96

Pamphlet on Home Mortgage Lending and Equal Treatment, Letter #19-93, dated 3/16/92

OTHER

A Guide to HMDA Reporting – Getting It Right!, Interim Edition with Revised MSA, State, & County Codes (Effective January 1, 1995)

Formal and Informal Action Procedures Manual (FIAP)